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**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CRIMINAL MISC. PETITION NO.1772/07

Dilip Singh Rathor **Versus** State

DATE OF ORDER :: 04/12/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. P.C. Bhandari, for petitioner

Mr. Arun Sharma, Public Prosecutor for State

Instant petition has been filed assailing order dated 3rd May, 2007 where on his private complaint, learned trial Judge has proceeded to adopt procedure in getting his own statement and of his witnesses recorded u/ss.200 & 202 Cr.P.C., but has not considered his request to send complaint for investigation u/s.156(3) Cr.P.C.

Counsel for petitioner submits that after complaint being received by learned Magistrate, certainly there was an option either to refer the same for investigation u/s.156(3) Cr.P.C. or get the statements of complainant recorded u/s.200 and also his witnesses u/s.202 Cr.P.C. But, basic thrust of submission is that for nature of allegation which he has alleged in the complaint that can be properly investigated only if the matter would have been referred for investigation u/s.156(3) Cr.P.C. and not the procedure which learned trial Judge has adopted in the instant case. In support of his submission, counsel placed reliance on the judgment of apex court reported in AIR 1961 SC-986 and so also of Allahabad High Court reported in 2002 Cri.L.J.-2907.

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This court considered the submission and also perused the material.

From bare look of provision that if FIR is not registered u/s.154 of the Code, the complainant has remedy to file complaint u/s.190 of the Code and it is for the learned Magistrate to examine either to refer the complaint u/s.156 (3) Cr.P.C. or if considers proper to get the statements of complainant recorded u/s.200 and so also his witnesses u/s.202 Cr.P.C. In the facts of instant case taking note of complaint, learned trial Judge adopted the later procedure provided under the Code calling upon the complainant to get the statement recorded u/s.200 Cr.P.C.

This court does not find any infirmity in the procedure which was adopted by learned trial Judge while passing order dated 3rd May, 2007.

So far as the judgments [supra] on which counsel has placed reliance, are of no assistance to him and do not apply in the facts of instant case.

Consequently, the misc. petition fails and is hereby dismissed.

[AJAY RASTOGI], J.